

1 The Honorable Barbara J. Rothstein
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. 2:21-cv-1014

**ORDER DENYING PLAINTIFF'S
MOTION FOR REMAND**

In Re:
SAUK-SUIATTLE INDIAN TRIBE,
Plaintiff,
v.
CITY OF SEATTLE and SEATTLE
CITY LIGHT, a subdivision of the
City of Seattle,
Defendants.

I. INTRODUCTION

This matter comes before the Court on Plaintiff's Motion for Remand of this case to the Superior Court of the State of Washington for Skagit County, from which Defendants removed it. Plaintiff is the Sauk-Suiattle Indian Tribe, a tribal nation with an address at Darrington, Washington. Am. Compl., ¶ 2.A., Dkt. No. 1, Ex. A to Notice of Removal. Plaintiff named as "Respondents" the City of Seattle and a subdivision thereof, Seattle City Light.¹ Plaintiff filed a complaint seeking a declaration that the "presence and operation" of the Gorge Dam, a hydroelectric dam owned and operated by Defendants on the Skagit River in Newhalem,

¹ Seattle City Light is not a distinct legal entity. Nevertheless, the Court will refer to City Light and the City of Seattle, collectively, as "Defendants."

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1 Washington, violates the constitutions of Washington and the United States, in addition to state
 2 and federal law, by blocking the passage of fish within the Skagit River. For the following
 3 reasons, the Court concludes that it has federal subject-matter jurisdiction over Plaintiff's claims,
 4 and denies Plaintiff's Motion for Remand.

5 **II. BACKGROUND**

6 The Gorge Dam in Newhalem, Washington is one of three dams comprising the Skagit
 7 River Hydroelectric Project, which is owned and operated by Defendants. The dam is licensed by
 8 the Federal Energy Regulatory Commission ("FERC") pursuant to the Federal Power Act
 9 ("FPA"), 16 U.S.C. §§ 791a, *et seq.* In 1927, the dam was granted a 50-year license to operate by
 10 FERC's predecessor agency, the Federal Power Commission ("FPC"). *See* Mot. to Dismiss, p. 3
 11 (citing Order Accepting Settlement Agreement, Issuing New License, and Terminating
 12 Proceeding ("1995 FERC Order"), 71 FERC 61,159, 61,552 (May 16, 1995), 1995 WL 301337).
 13 Subsequent to expiration of that license in 1977, FERC issued annual licenses under the terms and
 14 conditions of the original license. 1995 FERC Order, 71 FERC at 61,159, n. 1. In 1995, FERC
 15 issued a Relicensing Order, authorizing operation for another 30 years. That license is scheduled
 16 to expire in 2025, and the reauthorization process has already begun, involving numerous state
 17 and federal agencies and other stakeholders, including Plaintiff.

18 The Gorge Dam spans the width of the Skagit River and does not currently allow for the
 19 passage of migrating fish. Am. Compl., ¶¶ 4.B, 4.C. Plaintiff originally filed its complaint in
 20 Skagit County Superior Court, claiming that the "presence and operation" of the dam and in
 21 particular, Defendants' failure to provide for fish passage, violate provisions of the United States
 22 and Washington Constitutions and state and federal statutes. *Id.*, ¶¶ 5.A., 5.B. Plaintiff also claims
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1 the dam constitutes a nuisance, and alleges state common law violations. *Id.*, ¶¶ 5.C., 5D. Plaintiff
 2 seeks equitable relief, including a declaration that Defendants are in violation of the law, and an
 3 injunction requiring Defendants to provide a means for migratory fish species to bypass the dam.

4 *Id.*, ¶¶ 6.A.-6.D.

5 Defendants timely removed this action, contending that the Court has subject matter and
 6 supplemental jurisdiction over Plaintiff's claims. *See* Notice of Removal, ¶ 6 (citing 28 U.S.C. §§
 7 1331, 1337(a)), Dkt. No. 1. More specifically, Defendants have asserted (1) that the Court has
 8 federal question jurisdiction because Plaintiff's claims "arise under the laws of the United States,"
 9 and (2) that Plaintiff's state claims "are so related to claims" over which this Court has original
 10 jurisdiction "that they form part of the same case or controversy under Article III of the United
 11 States Constitution." *Id.*

12 III. DISCUSSION

13 A. Federal Question Jurisdiction Over State-Law Claims

14 A defendant may remove to federal court any case filed in state court over which the
 15 federal court would have original jurisdiction. 28 U.S.C. § 1441(a). Federal question jurisdiction
 16 exists over "civil actions arising under the Constitution, laws, or treaties of the United States." 28
 17 U.S.C. § 1331. "The general rule, referred to as the 'well-pleaded complaint rule,' is that a civil
 18 action arises under federal law for purposes of § 1331 when a federal question appears on the face
 19 of the complaint." *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020) (citing
 20 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). As the party asserting federal jurisdiction,
 21 the burden is on Defendants to establish they are entitled to remain in federal court. *See Gaus v.*
 22 *Miles*, 980 F.2d 564, 566-67 (9th Cir. 1992).

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1 In this case, Plaintiff seeks only declaratory and injunctive relief under RCW 7.24.010, the
 2 Washington Declaratory Judgments Act. However, “federal question jurisdiction encompasses
 3 more than just federal causes of action. Federal courts have jurisdiction to hear ‘cases in which a
 4 well-pleaded complaint establishes either that federal law creates the cause of action or that the
 5 plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal
 6 law.’” *Indep. Living Ctr. of S. California, Inc. v. Kent*, 909 F.3d 272, 278 (9th Cir. 2018) (quoting
 7 *Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27–28 (1983)). A
 8 question of federal law is “substantial” enough to establish jurisdiction if the federal issue is “(1)
 9 necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal
 10 court without disturbing the federal-state balance approved by Congress.” *Gunn v. Minton*, 568
 11 U.S. 251, 258 (2013).

12 **B. Whether Plaintiff’s Claims Raise Substantial Federal Issue; Supplemental
 13 Jurisdiction**

14 In their Notice of Removal, Defendants claim this Court has jurisdiction over “the
 15 substantial federal question of whether the presence and operation of the Gorge Dam” violates the
 16 Washington Constitution, and/or the Supremacy Clause of the U.S. Constitution. These claims are
 17 based on two federal “Congressional Acts” referenced in the amended complaint. *See* Notice of
 18 Removal, p. 4-5 (quoting Am. Compl., ¶¶ 5.A.-B., 6.A.-B.). Defendants argue that Plaintiff’s
 19 other two claims, for nuisance and violation of Washington common law, also “necessarily raise a
 20 federal issue under the FPA” and Defendants’ FERC license issued thereunder. Notice of
 21 Removal, p. 6. In the alternative, Defendants claim the Court has supplemental jurisdiction over
 22 Plaintiff’s state nuisance and common-law claims, “so related to claims in the action within such
 23 original jurisdiction that they form part of the same case or controversy under Article III of the

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1 United States Constitution.” Notice of Removal, p. 9 (citing 28 U.S.C. § 1367).

2 The first task for the Court, therefore, is to determine whether Plaintiff’s constitutional
 3 claims necessarily raise a disputed, substantial federal issue. *Gunn*, 568 U.S. at 258. In this case,
 4 the amended complaint, on its face, does indeed raise a number of federal questions. Most
 5 obviously, Plaintiff avers under the heading “Claims for Relief” that Defendants’ actions
 6 “violate[] Article VI, ¶ 2 of the United States Constitution providing that the laws of the United
 7 States are the Supreme Law of the nation,” and seeks a declaration that “the presence and
 8 operation of respondent’s dam violates the Supremacy Clause of the United States Constitution in
 9 that respondent is subject to the prohibitions against dams that block fish migration contained in
 10 Congressional Acts binding within what is now the State of Washington.” Am. Compl., ¶¶ 5.B,
 11 6.B. In arguing its complaint does not raise a federal question, Plaintiff fails even to acknowledge
 12 its claim that Defendants’ actions somehow violate the federal Supremacy Clause, let alone
 13 explain how that claim escapes federal jurisdiction. Although the complaint does not reveal the
 14 legal theory underpinning the Supremacy Clause claim, that claim is undoubtedly “substantial,”
 15 judging by its prominent iteration (and reiteration) in the complaint; it forms the basis for one of
 16 only four “Claims for Relief” articulated in the complaint, and one of four of the declarations
 17 sought. In addition, Defendants dispute they are in violation of the Supremacy Clause, or that the
 18 provision prohibits them from operating the dam as they currently do. The Court concludes the
 19 Supremacy Clause claim raises a substantial and disputed federal issue sufficient to establish this
 20 Court’s jurisdiction.

21 The face of the complaint reveals another, independent basis for this Court’s jurisdiction:
 22 the federal statutes on which Plaintiff’s claims are based. They include (1) the Act to Establish the
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1 Territorial Government of Oregon, ch. 177, 9 Stat. 323 (1848), establishing the Oregon Territory
2 (including an area that would later become Washington), which provides in relevant part that “the
3 rivers and streams of water in said Territory of Oregon in which salmon are found, or to which
4 they resort, shall not be obstructed by dams or otherwise;” and (2) the Act to Establish the
5 Territorial Government of Washington, ch. 90, 10 Stat. 172 (1853), establishing the Washington
6 Territory. Indeed, Plaintiff devotes an entire section of its complaint, titled “Congressional Acts,”
7 to these federal statutes, and appends the relevant sections of the statutes to its complaint at
8 Exhibits A and C, and a statement by U.S. Representative Grinnell supporting the ban on dams
9 blocking fish passage, at Exhibit B.

10 Nevertheless, Plaintiff argues that the statutes on which its claims are based are state, not
11 federal. Its argument is that upon becoming a state, Washington incorporated these statutes into
12 state law by way of its constitution, which provides, in relevant part, that “[a]ll laws now in force
13 in the Territory of Washington . . . shall remain in force.” Washington Const., Art. XXVII, Sec. 2.
14 However, Plaintiff expressly and necessarily asks a court to interpret the text of these statutes; to
15 divine the intent of Congress in passing them; and to determine whether or not they were
16 incorporated into state law, and/or were repealed by subsequent acts of Congress. *See e.g.*, Mot. at
17 11 (“[T]his is a case of statutory construction, the question being whether enactment of the
18 Federal Power Act terminated the obligation embodied in the 1848 and 1853 statutes requiring
19 that dams have fish passage.”); Pl.’s Rep. at 3 (“[T]he construction and determination of the
20 applicability of certain federal statutes may be necessary for the state court to perform in order to
21 resolve plaintiff’s claims.”); *id.* at 6 (“[T]he United States Congress saw fit in the exercise of its
22 federal powers to impose that restriction [concerning fish passage] upon Washington Territory.”).

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1 Indeed, the very basis for Plaintiff's Supremacy Clause claim appears to be that the State is bound
 2 by these supreme federal laws. Am. Compl., ¶ 6.C. (dam "violates the Supremacy Clause of the
 3 United States Constitution" because "Congressional Acts" of 1848 and 1853 are "binding within
 4 what is now the State of Washington.").

5 Under these circumstances, the Court concludes that Plaintiff's federal constitutional and
 6 statutory claims—raising not only substantial, but pivotal federal issues apparent on the face of
 7 the complaint—provide an adequate basis to assert this Court's jurisdiction. *See Indep. Living
 8 Ctr. of S. California*, 909 F.3d at 279 (federal issue is sufficiently substantial where it is "central
 9 point of dispute.") (citation omitted).

10 The only remaining question is whether the Court should exercise supplemental
 11 jurisdiction over Plaintiff's state nuisance and common-law claims.² The exercise of supplemental
 12 jurisdiction is appropriate where state-law claims "are so related to claims in the action within
 13 such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. §
 14 1337(a); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966) (finding
 15 supplemental jurisdiction allows parties to append state law claims over which federal courts
 16 would otherwise lack jurisdiction to federal claims, so long as "[t]he state and federal claims ...
 17 derive from a common nucleus of operative fact"). Plaintiff's various causes of action all center
 18 on a single, discrete issue; whether Defendants may continue to operate the Gorge Dam in the
 19 absence of a passageway for fish. Teasing out the state claims from the federal and having them
 20 proceed in two separate court systems would be both difficult, and an inefficient use of judicial
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22 ² Because the Court concludes that supplemental jurisdiction is appropriate, it declines to reach the question of
 23 whether Plaintiff's nuisance and common-law claims, independent from the constitutional and statutory claims, raise
 24 substantial federal issues that would be sufficient to establish federal question jurisdiction.

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1 resources. Indeed, not even Plaintiff requests such piecemeal remand. The Court concludes that
2 exercising supplemental jurisdiction over Plaintiff's state-law claims is appropriate in this case.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court DENIES Plaintiff's Motion for Remand.

5 DATED this 9th day of November, 2021.

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Barbara Jacobs Rothstein
U.S. District Court Judge

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